IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 9TH JULY 2007 / 18TH ASHADHA 1929

Crl.MC.No. 2190 of 2007()

SC.450/2003 of I ASST. SESSIONS COURT, PALAKKAD
CRIME NO. 262/1999 of KOLLAMKODE POLICE STATION

.....

PETITIONER: 3RD ACCUSED

VASANTHAN, AGED 32 YEARS,
S/O. SUBRAMANIAN, POYYOURA HOUSE,
MANAKULANGARA DESOM, KODAKARA VILLAGE, THRISSUR.

BY ADV. SRI.RAJESH CHAKYAT

RESPONDENTS: COMPLAINANT

THE SUB INSPECTOR OF POLICE,
KOLLAMKODE POLICE STATION, REP. BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

BY ADV. SRI. GIKKU JACOB, PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 09/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

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Crl.M.C. No.2190 Of 2007

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Dated this the 9th day of July, 2007

ORDER

The petitioner faces allegations, inter alia, under Section 395 IPC. The case was registered and posted on 21.12.06 for appearance of the petitioner for framing charges. The petitioner could not appear before the learned Judge on that day. He was obliged to appear before the MACT, Irinjalakuda for adducing evidence in another case. In these circumstances, he filed an application before the learned Sessions Judge to excuse his absence in S.C.No.450/03. The learned Sessions Judge rejected the said application and issued a non-bailable warrant against the petitioner.

2. According to the petitioner he is innocent. His absence was not wilful. He had made necessary representations through his counsel also. The petitioner is willing to co-operate with the further progress of the case. In these circumstances, appropriate directions may be issued under section 438 Cr.P.C and/or 482 Cr.P.C, prays the learned counsel for the petitioner.

3. After the decision in **Bharat Chaudhary v. State of Bihar** [A.I.R 2003 S.C 4662], it is trite that powers under Section 438 Cr.P.C can be invoked in favour of a person who apprehends arrest in execution of a non bailable warrant issued by a court in a pending

proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist. I am not persuaded in the facts and circumstances of this case to conclude that any such reasons exist.

4. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police [**2003(1) KLT 339].

5. This application is, in these circumstances, dismissed, but with the specific observation that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously .

6. It is further directed that the non-bailable warrant issued against the petitioner shall not be executed till 16.7.07. In the meantime the petitioner must surrender before the learned Magistrate and seek regular bail.

(R.BASANT, JUDGE)

sj

/TRUE COPY/

P.A.TO JUDGE